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BANKRUPTCY—PROVABLE CLAIMS—NOTE ARISING OUT OF SEPARATE TRANSACTION, HELD AS COLLATERAL SECURITY.—The K. Co., a bankrupt, was indebted to A for a bill of goods, payment of which was guaranteed by B. Later A pressed B for security and B gave him as such, a note of the K. Co. arising out of a separate transaction. In the proceedings in bankruptcy against K Co. A sought to prove both his original claim and that represented by the note. *Held* that both claims were provable by A. *In re H. V. Keep Shirt Co.* (D. C. N. Y. 1912) 200 Fed. 80.

The court declared this to be a case of first impression, and no case directly in point is found, although the principle upon which the decision is based is well settled. In *First National Bank of Beaumont* v. *Eason,* 149 Fed. 204, 79 C. C. A. 162, a creditor sought to prove two obligations of the bankrupt; one was a note of which the bankrupt was the maker, and the other was the bankrupt's indorsement of a forged note which the payee held as collateral security for the payment of the original debt. The court held that the payee could recover only on the original note, as there was only one debt, supported by a single consideration, for which there could be but one satisfaction; payment of the note would discharge the right to recover on the contract of indorsement. In *In re Noyes Bros.,* 127 Fed. 286, 62 C. C. A. 218, a creditor of a bankrupt firm held notes of the firm indorsed by the firm through its treasurer, David W. Noyes, and by David W. Noyes individually. The creditor was also in possession of certain collateral securities which, as a matter of fact, were found to have been pledged to secure the individual indorsement of Noyes. The court held that the creditor might retain the proceeds of these securities and yet prove its entire original claim against the firm. *In re Mertens,* 144 Fed. 818, 75 C. C. A. 548, allowed a creditor of a bankrupt firm, holding securities of one of the individual partners, to retain the securities and have its claim against the firm allowed in full. While the facts of the principal case are novel and somewhat peculiar, the rule of law applied is an old one and there is no doubt of the correctness of the holding. The decision proceeds on the principle of subrogation. The note held by the creditor as collateral was not a part of the bankrupt's estate. It had been indorsed to the creditor by a third party to give further security for a debt of the bankrupt for which the third party was surety. It was a valid obligation of the bankrupt and unless provable by the creditor into whose hands it had come, the bankrupt would be relieved from the obligation represented by the note.

BILLS AND NOTES—DRAFTS—CONTRACT TO HONOR—X sent the following telegram to defendant: "Will you wire me that you will honor draft for $300?" Defendant telegraphed back, "I will." Thereupon X presented to plaintiff company these telegrams and a sight draft for $300, drawn on defendant to X's order, and plaintiff company purchased the draft on the strength of the telegrams. *Held,* that the telegrams created an agreement on the part of the defendant to honor the draft. *Oil Well Supply Co.* v. *Mac Murphy* (Minn. 1912) 138 N. W. 784.

The negotiable instruments law provides that "an unconditional promise in

writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person, who, upon the faith thereof, receives the bill for value." The rule is the same whether the promise is to accept an existing or a non-existing bill. *Ruiz* v. *Renald,* 100 N. Y. 256; *Putnam Bank* v. *Snow,* 172 Mass. 569. In order that the promise to accept a non-existing bill shall amount to an acceptance, it is necessary; (1) That it should be written a reasonable time before the bill is drawn; (2) That the promise must so describe the bill that there can be no doubt of its application to it. I DANIEL, NEG. INSTR. (5 Ed) § 560. et. seq. The principal case seems to be lacking in the second requisite. In *Franklin Bank* v. *Lynch,* 52 Md. 270, it was held that a telegraphic message, "You may draw on me for $700," was not acceptance, the court saying that the telegram did not point to or designate the draft. It has been held that the rule that the promise to accept amounts to an acceptance does not apply to bills payable at or after sight. I DANIEL, NEG. INSTR. (5 Ed.) § 562; *Wildes* v. *Savage,* 1 Story C. C. 22.

BURGLARY—BREAKING—DOOR PARTLY OPEN.—Defendant was charged with burglariously breaking and entering a storehouse. The theory of the prosecution was that the defendant had entered through a sliding door. From the evidence it was uncertain whether this door had been fully closed by the employees of the building. The defendant requested instructions to the effect that if the door were "partly open" a pushing of the same further open could not constitute a breaking. *Held,* such instructions were properly refused. *State* v. *Sorenson* (Iowa 1912) 138 N. W. 411.

The majority of the Court held that if a door be so nearly closed that the accused could not enter through the opening without pushing the door further open, then such pushing will constitute a "breaking" within the meaning of the law. The view of the Court is apparently contrary to the great weight of authority. "It is not a breaking to enter through an open door, window, or other aperture; or to push further open a door or window already open in part." 2 BISHOP, CRIM. LAW, § 91. "If a door, window or transom is open or partly open it is not burglary to enter, although it has to be pushed further open to admit the body." 6 CYC. 174. The principal case cites many cases to the same effect. Some of these cases suggest that the carelessness of the owner in leaving his windows or doors partly open affords a temptation to strangers to enter, and that one induced to enter by such negligence of the owner should not be held guilty of burglary. *Timmons* v. *State,* 34 Ohio St. 426; *Commonwealth* v. *Stephenson,* 8 Pick. (Mass.) 354. In *Peo.* v. *White,* 153 Mich. 617, 17 L. R. A. (N.S.) 1102, a case cited in support of the principal case, the Court held that the further opening of a partly open window was a breaking, and, although recognizing that there was respectable authority to the contrary, refused to follow it as being against sound reasoning. In *Claiborne* v. *State,* 113 Tenn. 261, 68 L. R. A. 859, where the defendant pushed open a partly open window and entered, it was held that his act was a breaking sufficient to warrant a conviction of burglary. As was suggested in that case the law as laid down by the majority of the cases seems to be, logically, a "useless refinement."